

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION
NO. 05-11443-GAO

ETHAN THOMAS
Plaintiff,

VS.

NEW ENGLAND FAST FERRY OF
MASSACHUSETTS, LLC,
Defendant.

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION
IN LIMINE CONCERNING ALLEGED COMPLAINTS
ABOUT THE WINCH BY MANNY SOMOANO

Now comes the defendant, New England Fast Ferry of Massachusetts, LLC, in the above-entitled action, by and through its undersigned counsel, and files its Opposition to Plaintiff's Motions in Limine Concerning Alleged Complaints About the Winch by Manny Somoano.

As grounds in support of its Opposition, the defendant submits the following for this Honorable Court's consideration.

The defendant submits that Mr. Mark Rozum, Director of Terminals and Parking Facilities at the Steamship Authority, investigated the incident concerning the injury to Ethan Thomas. As part of his investigation, he interviewed individuals and authored a report identifying

complaints concerning the winch, its springs, its pawl and its operating condition prior to Mr. Thomas' injury. As a result, he authored a document kept in the ordinary course of business reporting such information to his superior at the Steamship Authority.

In addition to the foregoing, Mr. Rozum testified under oath that he had spoken with Manny Somoano and received complaints from him concerning the condition of the pawl and its spring on the winch. Other individuals also reported pre-existing defects in the pawl and spring.

The evidence is admissible as an exception to the hearsay rule under Rule 803 of the Federal Rules of Evidence. The defendant respectfully requests that the Court reserve its ruling on the admissibility of such information until the appropriate foundation has been laid and the matter is offered into evidence.

WHEREFORE, the defendant prays that Plaintiff's Motion in Limine Concerning Alleged Complaints About the Winch by Manny Somoano be denied for the foregoing reasons at the Court's appropriate determination of the evidence offer.

Respectfully submitted,

By its attorneys,

CLINTON & MUZYKA, P.C.

"/s/Thomas J. Muzyka"

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